### The Wackenhut Corporation and Santa Clara County Public Safety Officers' Association. Case 32–CA–16753

July 10, 1998

# **DECISION AND ORDER**

# BY CHAIRMAN GOULD AND MEMBERS FOX AND HURTGEN

Pursuant to a charge filed on May 7, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint on May 14, 1998, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 32–RC–4348. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On June 5, 1998, the Acting General Counsel filed a Motion for Summary Judgment. On June 8, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

# Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its contention, raised and rejected in the representation proceeding, that the Union, a union which represents guards, cannot be certified for this unit of guards under Section 9(b)(3) of the Act because it is affiliated with a non-guard union, the Carpenters Union.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has

not raised any representation issue that is properly litigable in this unfair labor practice proceeding.<sup>3</sup> See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.<sup>4</sup>

On the entire record, the Board makes the following

Sakata's support of the Union's picketing, which occurred after the Board's denial of the Respondent's request for review of the Regional Director's Supplemental Decision and Certification of Representative. We find that this alleged evidence is irrelevant to the issue raised by the Acting General Counsel's motion, which is whether the Respondent committed an unfair labor practice when it refused to bargain with the Union after its certification. The proffered evidence concerning Carpenters agent Sakata's involvement in union picketing and his treatment of a unit employee describes conduct allegedly occurring, so far as dates are specified, after the Respondent's May 4 refusal to bargain. To the extent that the Respondent has new evidence that might demonstrate that, subsequent to the Respondent's refusal of the Union's bargaining demand, the Union was indirectly affiliated with the Carpenters, the appropriate procedure is for the Respondent to file a petition to revoke the certification. Coin Devices Corp., 325 NLRB No. 75 fn. 2 (Mar. 23, 1998); NLRB Casehandling Manual, Representation Proceedings, Sec. 11478.3. We note, however, that the proffered evidence is not inconsistent with the statement in the Union's letter dated November 28, 1997, that Sakata was "no longer authorized to act as an agent of [the Union]" but would "continue to serve only as an advisor." In denying the Respondent's Motion for Reconsideration of the Board's November 3, 1997 order denying its request for review, the Board found that indication that Sakata was serving in an advisory role insufficient to establish indirect affiliation with a nonguard union within the meaning of Sec. 9(b)(3) of the Act. Thus, even accepting as true the allegations in the declaration of Doug Parker (Exh. O to the Respondent's response to the Notice to Show Cause), we would find that evidence no basis for revoking the certification.

<sup>3</sup>The Respondent asserts in its answer and its response to the Notice to Show Cause that the certified unit has ceased to exist because the guards that it employs are no longer sworn. (The certified unit, as described below, consists of the Respondent's "armed and sworn security officers" The Respondent admits that it continues to employ armed guards.) That the Respondent's guards may no longer be sworn has no bearing on the continued appropriateness of the certified unit. In any event, this issue is not one that is appropriately raised in this refusal-to-bargain unfair labor practice proceeding where the Respondent is refusing to honor a Board certification. See Southwestern Bell Telephone Co., 235 NLRB 963 fn. 2 (1978).

<sup>4</sup> Member Hurtgen notes that he would have granted the Respondent's motion for reconsideration of the Board's November 3, 1997 denial of the Respondent's request for review of the Regional Director's Decision and Direction of Election, and that he dissented from the Board's May 6, 1998 denial of the Respondent's request for review of the Regional Director's Supplemental Decision and Certification of Representative. These votes by Member Hurtgen were based on his concern that a nonguard union (the Carpenters Union through agent Sakata) was playing so substantial a role in the affairs of the Petitioner as to warrant a finding of indirect affiliation. In the instant case, the Respondent offers evidence of continuing activity by Sakata. In these circumstances, Member Hurtgen would not grant the General Counsel's motion for summary judgment. Unlike other "technical 8(a)(5)" cases, the Respondent has proffered new evidence. Member Hurtgen would hear that new evidence and would consider it together with the evidence adduced in the representation case. He would do this before ordering the Respondent to bargain with a guard union that may well be in continued affiliation with a nonguard union.

<sup>&</sup>lt;sup>1</sup> In its answer, the Respondent, for the first time, denies the labor organization status of the Union. The Respondent did not challenge the Union's labor organization status in the underlying representation case, and it has offered no facts herein which would put that status in question.

<sup>&</sup>lt;sup>2</sup>The Respondent contends in its response to the Notice to Show Cause that it has new evidence of the Union's improper affiliation with the Carpenters Union, i.e., Carpenters' business agent Mel

#### FINDINGS OF FACT

#### I. JURISDICTION

At all material times, the Respondent, a Delaware corporation, with various business locations in Santa Clara County, California, has been engaged in providing security guard services. During the 12-month period immediately preceding issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000, and purchased and received at its various locations goods and services valued at more than \$5000 which originated from points outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

## A. The Certification

Following the election held November 5, 1997, the Union was certified on March 17, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part time armed and sworn security officers, including "leader officers," employed by Respondent to service its contract with the Santa Clara County Valley Transit Authority; excluding non-armed and non-sworn security officers, all other employees, office clerical employees, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

#### B. Refusal to Bargain

Since on or about April 7, 1998, the Union has requested the Respondent to bargain, and, since on or about May 4, 1998, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

# CONCLUSION OF LAW

By refusing on and after May 4, 1998, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to

cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

#### **ORDER**

The National Labor Relations Board orders that the Respondent, The Wackenhut Corporation, Santa Clara County, California, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Refusing to bargain with Santa Clara County Public Safety Officers' Association, as the exclusive bargaining representative of the employees in the bargaining unit.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full time and regular part time armed and sworn security officers, including "leader officers," employed by Respondent to service its contract with the Santa Clara County Valley Transit Authority; excluding non-armed and non-sworn security officers, all other employees, office clerical employees, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facilities in Santa Clara County, California, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 32 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where

<sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 4, 1998.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

# **APPENDIX**

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Santa Clara County Public Safety Officers' Association as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full time and regular part time armed and sworn security officers, including "leader officers," employed by us to service our contract with the Santa Clara County Valley Transit Authority; excluding non-armed and non-sworn security officers, all other employees, office clerical employees, and supervisors as defined in the Act.

THE WACKENHUT CORPORATION